

**ORIGINAL**

**DOUGLAS F. CUSHNIE**

P. O. BOX 949

SAIPAN, MP 96950

TELEPHONES: (670) 234/6843 • 234/6830

FAX: (670) 234/9723

Attorney for **Guerrero Brothers, Inc., et al.**

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

**UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS**

**CYNTHIA A. METZLER, ACTING )  
SECRETARY OF LABOR, UNITED )  
STATES DEPARTMENT OF )  
LABOR, )**

**Plaintiff,**

**vs.**

**GUERRERO BROTHERS, INC., )  
et al., )**

**Defendants.**

**CIVIL ACTION NO. 97-00011**

**MEMORANDUM OF  
POINTS AND AUTHORITIES**

**DATE: SEPTEMBER 15, 2005**

**TIME: 8:30 A.M.**

**JUDGE: ALEX R. MUNSON**

Defendants filed on August 25, 2004 their motion for order in aid of judgment. After hearing this court entered its order that the parties meet and confer to determine the best way to secure the monies that were to be used to pay the workers on the new Tinian High School Project of which Guerrero Brothers, Inc. was the contractor. Subsequent to that time a letter was sent to Century Insurance, the bonding company that upon information and belief received the balance of the Tinian High School Project funds from the Commonwealth Department of Finance. That letter sets forth the factual situation existing. The

letter was not responded to. Subsequently letters were sent to Barbara Matthews the attorney who has been handling this matter for the Department of Labor explaining to her the situation and inquiring as to whether they could provide any direct assistance to secure this money. These efforts were not productive. Accordingly, it has become necessary to return to court to precisely ascertain the location of the remaining funds from the Tinian High School Project, secure their return to the Department of Finance and payment of the judgment.

As will be seen from the exhibits attached to the declaration of counsel, the money in dispute totals \$804,046.73. All of these funds were subject to a settlement agreement between Guerrero Brothers, Inc. and the Commonwealth Public School System as is evidenced by Exhibit 5, attached to the declaration. That exhibit provided for payment by the Public School System of \$500,000.00 to Guerrero Brothers, which in fact occurred and the Interpleader of the \$804,046.73 in to a pending action between the Commonwealth Development Authority and Guerrero Brothers, Inc. The Interpleader which the Public School System was to have accomplished did not take place. Further, the administrative appeal filed by Guerrero Brothers arising out of a termination for default on the new Tinian High School Project was converted by the Public School System to a termination for convenience. See Exhibit 6 attached to the declaration.

Defendants believe that the funds, part of which were to be used to pay the

labor claims, were in fact disbursed by the Public School System in violation of the settlement agreement to Century Insurance Company. It is the purpose of this proceeding to secure control over those funds, apply them in the appropriate amounts to the judgment in this action and if possible in this proceeding cause them to be returned to the Commonwealth Department of Finance and interplead as per the agreement of Guerrero Brothers, Inc. and the Public School System.

DATED this 9<sup>th</sup> day of August, 2005.

RESPECTFULLY SUBMITTED,

DOUGLAS F. CUSHNIE  
Attorney for Defendants

BY

  
DOUGLAS F. CUSHNIE

DOUGLAS F. CUSHNIE, SAIPAN, CM 96950